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The changing role of the Ombudsman

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Introduction

Whenever I think of the role of the Ombudsman and how we fit into the administrative justice landscape and the increasingly crowded dispute-resolution business, I have a recurring image of a cartoon which seems somewhat apposite: large reptiles thrashing about in a pool with a lone figure confronting them in the middle. The caption reads: ‘When you’re up to your rear in alligators, it’s hard to remember that your mission was to drain the swamp.’

Just as you are examining the delivery of public services, Ombudsman offices everywhere are reassessing their mission, and their responses as Ombudsmen to the challenge of change. We are asking ourselves, ‘What is the point of difference that will help us continue to be relevant?’ How can we ensure that citizens can participate fully in the democratic process, or exercise their rights as consumers, by having the ability to get information to obtain access to justice and equity, and to do that quickly and efficiently? How do we respond to the challenges of financial constraints, multiple jurisdictions and rapid changes in technology which impact on our

work? How, indeed, do we maintain energy and drive, renew and revitalise our organisations so they continue to be places where people want to come to work, feel valued and know that what they do each day can make a difference to a person, an institution, a process? What are we here to do? And how do we measure that?

Recent conferences of Ombudsmen internationally have focused on this and on continuous improvement of their operations. More of the same will not do. We need to be ahead of the wave, agile, proactive, focused, open to using new technologies and techniques to achieve our purpose, and prepared to adapt our organisations and our investigative, oversight and monitoring roles accordingly.

It is particularly important that we keep abreast of developments in the public sector and that we understand the dynamics of the agencies we oversee. It is critical too that we understand the transactional costs of the agencies doing business with us and how we can add value to the relationship. We should not be seen as the ‘policeman’ but rather as an enabler of good governance.

In pursuit of that objective, my office offers training in complaint handling to public sector agencies and help in learning how to operate within the framework of the Ombudsman Act and the Official Information Act. We are not funded or mandated to do this, but we regard it as an important adjunct to our work. Increasingly, also, while preserving our ability to make judgement calls on service-delivery failures, we are trying to triage with agencies a great many more matters at the front end of a complaint, thus helping agencies to lift their game at first instance.

The challenges

For the international Ombudsman community, it is clear that we are at something of a crossroads.

In order to deal with the major changes confronting Ombudsmen in the social, political and economic environments within which we work, Ombudsmen associations are drawing closer together to share experience and trainings. In South Africa and Iran, Ombudsman Research Centres have been, or are being, developed to focus on practical programmes to assist members in their regions and to promote scholarship and research.

A higher level of community engagement is seen as critical to remaining relevant. Even in countries where the regime is conservative, or even authoritarian, expectations are high amongst people as to

what amounts to fair treatment and a good decision by an agency, and what is considered to be the reasonable delivery of public services.

In an excellent report by Gill et al. (2013) for Queen Margaret University in Edinburgh, the authors noted that ‘changes in Ombudsman schemes are being driven by developments in consumer behaviour, service provision and the policy environment and that these drivers demand a response from individual Ombudsman schemes and the Ombudsman community’.

In addition, I would add:

- Technology and new social media mean that voices and opinions (and any dissatisfaction) are heard by many quickly.
- Social movements, particularly in Europe and the Middle East, are affecting change from within and not waiting for official processes to take their course. Our colleague in the Ukraine faces particular challenges in the current circumstances where regime change followed by a possible realignment of the national borders has dislocated the population, and where the rule of law is under acute pressure.
- Jurisdictional ‘creep’, as Ombudsmen are increasingly being asked to take on additional activities based on human rights; for example, becoming a national preventive mechanism under the Optional Protocol to the Convention against Torture, or a monitoring mechanism under the Convention on the Rights of Persons with Disabilities. Many Ombudsmen are taking on the role of a National Human Rights Institution.
- Governments around the world are also shifting the delivery of public services to private providers in many cases. In others, the Ombudsman is being displaced from oversight even when the government maintains a majority ownership of an organisation which has been partially privatised.

Unfortunately, corrupt practices and dubious decisions become a possibility in this context, specifically where making a profit from the delivery of public services is the dominant motive. Indeed, let us be frank: corruption and misconduct within government and industry is a universal issue, no matter the size of the state. In some, it is more sophisticated and can be cleverly hidden. In others, it is almost unapologetically open and an accepted part of a society or culture.

The Ombudsman’s oversight is seen as one means of countering officials’ ability to fall into corrupt practices. We are blessed to live in

high-integrity countries but the risk to life and limb for some of our colleagues can be the consequence of the pursuit of justice. This is not a job for the faint-hearted.

The role of Ombudsmen in this challenging environment also requires us to be more proactive. To have the courage of our convictions to defend our findings in the face of increasingly conservative government responses and increasingly vehement right-wing opinions about what constitutes justice.

Standing together

The value of forming stronger links with the various associations of Ombudsmen that exist is being recognised. Sharing experiences of best practice and of how to navigate our way through the challenges inherent in the role and to our jurisdiction and powers, and strengthening training and development are two examples of the benefits to be obtained from a closer association. That is why the International Ombudsman Institute (IOI) is making serious efforts to strengthen its regional members, and to reach out to other Ombudsman organisations, entering into memoranda of understanding to promote the Ombudsman concept and to engage in mutually beneficial activities which will strengthen the capacity and capability of offices worldwide.

In our own backyard, both Australia and New Zealand are active participants in the Pacific Ombudsman Alliance, which assists our colleagues in the Pacific to increase their capacity and capability, and enables other small island states that do not presently have an Ombudsman to take the first steps towards establishing basic complaint-handling bodies.

New South Wales is building a resource for the new Ombudsman, which is funded by a grant from the IOI and which, with input from all our offices, will be rolled out in our region first and later to the other members of the IOI. Earlier, the Australian Ombudsmen, again under the leadership of the New South Wales office, developed a resource for managing unreasonable complainant conduct. This is an invaluable resource not only for our own staff but also for those of the agencies we oversee. We are conducting workshops with agency staff to assist them to answer that perennial question, 'What do you say when you can't say goodbye?'

This initiative has now gone global, with training sessions promoted by the IOI in Vienna and, increasingly, on site in member countries. It is available in English, French and Spanish.

Collaboration like this among Ombudsmen is critical to maintaining standards and achieving economies of scale and skill in the production of material to help 'raise the bar'.

Other forms of collaboration are also being discussed. In recent conferences of Ombudsmen in Africa and Asia, much attention has been focused on cooperation and sharing of functions. As a response to belt-tightening, some integrity agencies are examining how coalescing their activities might create a critical mass, providing strength in the battle to maintain and develop good governance. The idea of one office (an Integrity Commission), for example, containing an Ombudsman, Information Commissioner and Anti-Corruption Commissioner, with a 'common back office', is being talked about in a number of jurisdictions. The OECD recently ran a seminar in Morocco focusing on how Ombudsman offices and anti-corruption agencies can work together – cooperatively or in collaboration.

There will be issues around independence of action and so on, but these can be worked through. It will be important, however, that the Ombudsman 'brand' is not diluted.

In October last year I attended a meeting with World Bank officials to build on previous exchanges we had had on developing a partnership with the bank. Initially this was to seek funding for developing the capacity and capability of the Ombudsman in countries where the World Bank has a programme promoting good governance. That meeting was followed by a more elaborate round-table discussion earlier this year, which served to update the World Bank on the role of the Ombudsman generally, and to discuss in more detail how we might work in partnership to achieve our common aims and collaborate with other integrity agencies in doing so.

Increasingly, also, there is interest on the international front in exploring how alliances between integrity agencies on a particular issue might give greater strength and breadth to major investigations. In New Zealand we have collaborated with the Office of the Auditor General on a significant issue involving the issuance of visas. I am currently involved with the Auditor General, the Human Rights Commissioner and the State Services Commission on matters to do with the Christchurch earthquakes, with our several joint activities informing the whole-of-government analysis of those events and their implications for community services – identifying some critical gaps in the recovery processes and picking up the pieces.

My office recently published a joint report with the Privacy Commissioner on our Earthquake Commission's performance in respect of complaints under the Official Information Act and the

Privacy Act (Office of the Ombudsman, 2013). A lesson from this is that: 'organisations have to be refocused around the needs of the citizen as a customer of public services, rather than the problems of those who provide the services'. An examination of service-delivery standards in the UK some time ago, aimed at putting the customer at the heart of the design and delivery of local public services, culminated in a report called *Getting it Right, and Righting the Wrongs*, which points to just such a reorientation as to how we should be looking at the relationship with our complainants (Government of UK, 2009).

In Christchurch, New Zealand, the local district health board, under the inspired leadership of its CEO, David Meates, is doing just that. He has so far involved around 15,000 people, individuals and agencies, in the design of a health service for the community for the future, and in some radical rethinking of how a hospital needs to perform to support that service. There are some great ideas for how we, as Ombudsmen, might look at how we do what we do and whether the current model is one to take us forward more effectively in a changed and changing environment. A more proactive engagement with the communities we serve and the agencies we oversee will be critical to Ombudsmen remaining relevant in an increasingly interconnected community. Using social media creatively, for example, opens up a whole new source of information gathering to inform investigations of maladministration or corruption.

André Marin's approach to his role as Ombudsman in Ontario is always instructive in this regard. He has his critics, but there is no denying the profile his office has in the community, or the results he achieves.

Alternative dispute resolution pathways and mediation are increasingly seen as important tools to meet consumer needs, as opposed to the more traditional, formal approach which has characterised Ombudsman schemes in the past. There are, of course, issues of credibility and sustainability that arise, and these have been canvassed in the excellent report produced by Gill et al. (2013).

A current development, which is gaining strength, and one which will have a significant impact on the Ombudsman's role, is the Open Government Partnership (OGP). This was the focus of a conference held here in Dublin in May this year.

The IOI and the World Bank also sponsored a webinar on the 'Role of Ombudsmen in advancing Open Government', in which Peter Tyndall represented the IOI as one of the keynote speakers.¹

¹ See <http://worldbankva.adobeconnect.com/p23wb9xvfw3/>

There is clearly an impetus for an Ombudsman to play an active role in shaping policy around this, and another opportunity for all of us to collaborate to promote the centrality of an Ombudsman and a robust public service in achieving the goals of the OGP. They are, after all, at the heart of what we stand for and what we practise. Of interest was the strong endorsement of the World Bank for the Ombudsman's role. As a result of the IOI's initiative, the Ombudsman is now firmly on the radar with that organisation, and we will be actively pursuing the next steps in that relationship shortly.

I am currently chairing a committee composed of academics, agency representatives and NGOs which is advising the State Services Commission in its work of strengthening integrity within the public service. An integrity strategy is being produced, as well as a roadmap for implementation of that strategy. This work is going hand in hand with an analysis of the OGP and of how the New Zealand Government will articulate that in practice. I rather suspect that the latter will be in for a shock when the full extent of this 'partnership' is realised – we struggle with the idea of consultation, particularly with respect to our Resource Management Act, so the idea of co-governance will be a real challenge! Although a recent 'lightbulb moment', when a group of public sector CEOs met with ourselves, the Human Rights Commission and representatives of the Disabled Persons' Convention Coalition, might be instructive. The CEOs came with multiple coloured charts and plans to do things to and for the disabled community. The Human Rights Commissioner and I hastily conferred and reversed the order of our presentation, putting our convention partner up first, starting from the disabled community's bottom line, 'Nothing about us without us'. When the presentation ended, the CEOs – to their great credit – put their papers away and asked, 'Now, how can we achieve this together?' The result since has been a very productive collaboration.

Looking further ahead, the UN Secretary General's recent report on *Intergenerational Solidarity and the Needs of Future Generations* explicitly referred to those national bodies and institutions, like ours, as the drivers of the changes that will be needed (UN General Assembly, 2013).

In its simplest form, intergenerational equity can be understood as fairness between generations. Our colleagues in Hungary initiated a conference to promote understanding of the unique characteristics of the relevant national institutions entrusted with promoting this idea, as well as of the legal principles and processes underlying their work.

They focused on establishing just how these bodies may contribute to the efforts of the UN in protecting the interests of future generations.

Accountability

Finally, when we speak of accountability in the public service, we must also reflect on the accountability of the Ombudsman and demonstrate that effectively. This is critical to Ombudsmen remaining relevant and being open and transparent in all they do. Along with stakeholder research, it is instructive to have a regular independent ‘health check’ of our own performance.

We are spending taxpayers’ – or stakeholders’ – money and we are obliged to them to perform to the best that we can and to keep them informed of our performance. As Ombudsmen, we simply will not last long if we are not demonstrating an ongoing commitment to doing things better.

UK academic Richard Kirkham (2012) posed several questions related to this:

- Does the Ombudsman reach a sufficient proportion of potential complainants or provide complainants with the service that they deserve?
- To what extent is the Ombudsman responsible for overseeing the quality of lower-level complaint handlers?
- When an Ombudsman recommends administrative reform, are changes implemented and do they make a difference in the long term? When an Ombudsman issues guidance, is it listened to?
- Is there any evidence to suggest that the Ombudsman increases trust in government?

He suggested we need hard evidence to continue to justify our existence and to make the argument, as we must, for being properly resourced to do the job.

That is easier said than done, of course. We fly under the radar and so often the fruits of our intervention are not easy, or perhaps appropriate, to trumpet abroad as it were. And obtaining evidence of, say, the money we have saved the government from the liability resulting from maladministration is difficult to obtain. We need, however, to consider developing some objective measures.

In some places Ombudsmen open themselves up to independent scrutiny, as noted earlier. Others regularly get a selection of their investigation files reviewed independently to ensure rigour in their

methodology – whether that resulted in a complaint being correctly analysed and conveyed to the agency, and the extent to which there was adequate, if any, follow-up to ensure actions were in fact undertaken as agreed. My own impression is that some of us might be a bit weak in that latter area.

We also need to tell our story more effectively as part of our accountability to the public we seek to serve. Ann Abraham, the former UK Parliamentary and Health Service Ombudsman, is undoubtedly a thought leader in this business. She says we need good storytelling and resonance. ‘I learnt many things during my time as an Ombudsman,’ she said. ‘One of the most important was that the 21st century Ombudsman needs a strong communications function and a proactive approach to communication... I now know that good communication is key to much of an Ombudsman’s success... if we don’t go out and present our arguments... no one else will do it for us’ (Abraham, 2012). I think we’d all agree with that.

I have seen, first hand, how even very small offices can adopt proactive relationships with media and the public, as well as with Parliament, to tell their story. When I taught the course for new Ombudsmen in London in recent years, I was always delighted, often surprised and more often moved at how the Ombudsmen – using simple and inexpensive means – communicated with their communities about their work.

I will always remember the story of a group of disabled women who made beautiful handcrafts and sold these to tourists to support themselves. The best pitch in town was outside a large hotel. The hotel manager objected to their presence. He said they were little more than beggars, some were hard to look at and they were disturbing hotel guests. He asked the council to move them on and the council found a rarely used local by-law to do just that. The women complained to the Ombudsman. The Ombudsman concluded that while the legal position was correct – the hotel and council being within their rights – the moral and human rights position was indefensible. She prepared a poster showing the women, with a few facts about their background and photos of their work. She asked the question, ‘What can be done about this situation?’ These posters were then distributed around the town.

Considerable media attention and public pressure followed. People came to stand with the women opposite the hotel and offered money to help. Hotel patrons began to join in. Neither the hotel nor the council could withstand the pressure – the reputation of the hotel was

at stake, and their future electability became a concern for the councillors (always a powerful driver for change in my experience). The Ombudsman brokered a meeting to discuss options, with the result that the women were each given a covered stall in the grounds of the hotel to sell their goods safely, and be sheltered from the weather. Hotel guests were enthusiastic patrons, the council took the credit and the Ombudsman smiled quietly.

What I like about that story is that it demonstrates just about everything we are involved with: equity; justice; the prevention of an abuse of power; human rights – the right of a disabled person to be a contributing member of society, the human right to good administration (a right now enshrined in the Charter of Fundamental Rights of the EU); and the Ombudsman as ‘broker’ and as willing to step outside the confines of the traditional mode of investigation, and to engage community support for the victims of discrimination and the abuse of power. It also brings us right back to the core of our mission.

Conclusion

In sum, continued confidence in the Ombudsman’s Office rests on Ombudsmen having clearly articulated outcomes, supported by a ‘fit-for-purpose’ structure; a demonstrably high level of trust and integrity between the office and those it deals with in the public sector and beyond; capable and competent staff; transparent and robust processes; impartiality and fairness; confidentiality; and a credible review process. It also rests on our ability to adapt and change to meet the challenges in the environment within which we work – economic, political, social and legal.

The role of the Ombudsman in both the private and public sector is vital to a well-functioning democracy, and to the maintenance of high standards of conduct in government and business. The economic and social health of our countries depend on all our institutions functioning as well as they can and dealing in a principled way with their consumers. The Ombudsman’s role is to ensure that they do, and that role is more important in this changing climate than ever before.

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